TRANSCRIPT OF RECORD.

163-674

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~358~~. 78

THE BALTIMORE AND OHIO AND CHICAGO RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN YARDE, JR., ADMINISTRATOR OF THE ESTATE OF WILLIAM L. SANDERS, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED JANUARY 2, 1892.

(14,950.)

(14,959.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1895.



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1 UNITED STATES OF AMERICA:

To John Yarde, Jr., administrator of the estate of William L. Sanders, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein The Baltimore & Ohio & Chicago Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable William A. Woods, judge of the district court of the U. S. for the district of Indiana and *ex officio* judge of said circuit court, this 5th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

W. A. WOODS.

2 On this eleventh day of December, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared Ezra D. Hartman before me, the subscriber, James E. Rose, a notary public in and for De Kalb county, in the State of Indiana, and makes oath that he delivered a true copy of the within citation to John Yarde, Jr., the defendant in error, on December 11, 1891.

EZRA D. HARTMAN.

Sworn to and subscribed the 11th day of December, A. D. 1891.

[Seal Notary Public, Indiana.]

JAMES E. ROSE,
Notary Public.

3 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the district of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said circuit court, before you, between John Yarde, Jr., administrator of the estate of William L. Sanders, deceased, and The Baltimore and Ohio and Chicago Railway Company, a manifest error hath happened, to the great damage of the said defendant, as by *his* complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on

this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 5th day of January next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 5th day of December, A. D. 1891.

NOBLE C. BUTLER, *Clerk*.

4 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and ninety-one, before the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY.
} No. 8662. Civil Action.

Be it remembered that heretofore, to wit, at the November term of said court, 1890, on the 2d day of May, 1891, before the Honorable William A. Woods, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by James E. Rose and J. H. Collins, its attorneys, and files a certified transcript of the proceedings had and papers filed in the De Kalb circuit court in the above-entitled cause; and said transcript is in the words following, to wit:

Pleas before the Hon. Stephen A. Powers, judge of the 35th judicial circuit of the State of Indiana and *ex officio* judge of the De Kalb circuit court of said State, at a regular term of said court begun and held in the court-house, in the town of Auburn, De Kalb county, Indiana, commencing on the 15 day of December, 1890.

5 JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY. } No. 3204.

Civil action for damages.

Be it remembered that heretofore, to wit, on the 22 day of November, 1890, the plaintiff in the above-entitled cause, by his attorney, William S. Penfield, filed in the office of the clerk of said court his complaint in the above-entitled cause; which complaint is in these words, to wit:

STATE OF INDIANA, } *ss:*
De Kalb County, }

In De Kalb Circuit Court.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY.

The plaintiff complains of the defendant, and says that during the five years last past said defendant has owned and operated and still owns and operates a railroad running through said De Kalb county, Indiana, and through the town of Garrett, in said county.

That during all said time there ran through the central part of said town, north and south, a public street which had existed as a public highway long before said railway was located; that
6 said street was intersected by the right of way and tracks of the defendant, which right of way and tracks ran east and west through the central part of said town, and all of which were within the corporate limits of said town; that on July 11, 1890, said decendent, William L. Sanders, was walking along said street in the night-time, and upon and over said crossing of said railroad and said street, and while he was thus walking along said street and attempting to pass over said crossing he was, without any fault on his part, run against and over by the cars of the defendant; that the defendants, by its servants who were operating said cars and the engine moving said cars, *were* negligent in the operation thereof, in this, that *they* caused said engine to kick said cars upon and over said crossing and pushed said cars negligently over said crossing at a high, dangerous, and reckless speed without giving any warning or signal to the traveling public of the movement of said cars upon

and over said crossing by the sounding of a whistle or ringing of a bell or by any watchman or flagman or in any other manner, and had negligently failed to provide any such watchman or flag-
7 man or gate at such crossing, although it was frequently passed over by the travelling public.

That the decendent was, without any negligence on his part, run upon and over as aforesaid and thereby bruised, crushed, mangled, and wounded so that within an hour thereafter he died.

That said decendent was at the date of said collision 53 years old, healthy and industry, and by his labor contributed to the support of his family; that he left surviving him his widow, Sarah, and four children, to wit, Ida, Edwin, Alonzo, and Laura, aged respectively 20, 17, and the two last 10 years; that said widow and children depended upon said decendent for their support, education, and nurture, and this action is prosecuted solely for their benefit; that at the time of said collision said decedent was earning and was capable of earning wages at the rate of two dollars per day, and by reason of the premises said plaintiff, widow, and children have been damaged in the sum of ten thousand dollars. Wherefore plaintiff demands judgment for ten thousand dollars.

W. S. PENFIELD
Att'y for Pl'ff.

8 And afterwards, to wit, on the 15th day of December, 1890, the same being the 1st judicial day of the December term, 1890, of said court, held at the place and before the hon. judge aforesaid, the following proceedings were had by said court in said cause, to wit:

"Comes now James E. Rose and —— Collins and enter their appearance as attorneys for the defendant herein, and file petition to have this cause removed to the United States court, and tenders its bond, with James E. Rose and Henry F. Sembower as sureties thereon; which bond is approved by the court and which petition and bond *is* in these words, to wit:

In the Circuit Court of De Kalb County, State of Indiana.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY.

Petition for Removal to the Circuit Court of the United States for the District of Indiana.

9 Your petitioner, The Baltimore and Ohio and Chicago Railroad Company, respectfully represents that the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and that this petition is filed prior to the time or at the time the defendant is required by the laws of the State of Indiana or by the rules of this court to

answer or plead to the declaration or complaint of the plaintiff filed herein.

That this cause is of a civil nature, between John Yarde, Jr., administrate- of the estate of William L. Sanders, dec'd, as plaintiff, who was at the commencement of this suit and still — a citizen of the State of Indiana, and The Baltimore and Ohio and Chicago Railroad Company as defendant, a corporation duly incorporated under the laws of the State of Ohio and which was at the time of the institution of this suit and now is a citizen of said last-named State.

Your petitioner has made and herewith files a bond, with good and sufficient surety, for its entering in the said circuit court for the district of Indiana aforesaid, on the first day of its next
10 session, a copy of the record in this suit and for paying all costs that may be awarded by the said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

And it prays this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Indiana; and it will ever pray.

J. E. ROSE AND
J. H. COLLINS,
Att'y- for the B. & O. & C. R. R. C.

STATE OF MARYLAND, *City of Baltimore,* } *ss:*

Orland Smith, being duly sworn, says that he is president of the Baltimore and Ohio and Chicago Railroad Company, and that the statements and allegations contained in the foregoing petition are true to the best of his knowledge, information, and belief.

ORLAND SMITH.

Subscribed and sworn to before me, a justice of the peace, this 11 day of December, 1890.

ROBERT A. THURSBY, *J. P.*

11 Know all men by these presents that we, The Baltimore and Ohio and Chicago Railroad Company, as principal, and James E. Rose and Henry F. Sembower, as sureties, are held and firmly bound unto John Yard, Jr., administrator of the estate of William L. Sanders, dec'ed, in the penal sum of five hundred dollars, the payment thereof, well and truly to be made unto the said John Yard, Jr., as such administrator, his representatives and assigns, we bind ourselves, our heirs, representatives, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Baltimore and Ohio and Chicago Railroad Company has filed its petition in the circuit court of De Kalb county, State of Indiana, asking for the removal to the circuit court of the United States, in the district of Indiana, of a certain cause wherein John

Yarde, Jr., as administrator, is plaintiff and The Baltimore and Ohio and Chicago Railroad Company is defendant:

Now, the condition of the above obligation is such that if the said Baltimore and Ohio and Chicago Railroad Company
12 shall enter in the said circuit court of the United States for the district aforesaid, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was improperly removed thereto, and shall do and perform all acts required by the laws of the United States to be done by it in the removal of said suit as aforesaid, then this obligation to be void; otherwise to remain in full force and virtue.

Witness the corporate name of the said The Baltimore and Ohio and Chicago Railroad Company, by Orland Smith, its president, and its corporate seal and the names and seals of —— ——, on the 15th day of December, 1890.

[SEAL.] THE BALTIMORE AND OHIO & CHICAGO RAILROAD COMPANY. [SEAL.]
ORLAND SMITH, *President.* [SEAL.]

Attest: P. C. SNEED, *S'c'ty.*

JAMES E. ROSE. [SEAL.]
HENRY F. SEMBOWER. [SEAL.]

Examined and approved by me this 15th day of December, 1890.

STEPHEN A. POWERS, *Judge.*

13 And afterwards, to wit, on *on* the 30th day of December, 1890, the same being the 14th juridical day of said term of said court, held at the place and before the hon. judge aforesaid, the following proceedings were had by said court in said cause, to wit:

Come the parties herein, by counsel, and the court now sustains the defendant's motion to remove this cause to the United States circuit court.

It is therefore ordered by the court that this cause be removed to the United States circuit court for the district of Indiana, and upon rece-ving the proper fee thereof the clerk of this court is ordered to make and transmit the entire record herein to the United States circuit court for the district of Indiana.

STATE OF INDIANA, } ss:
De Kalb County, }

I, Geo. A. Bishop, clerk of the De Kalb circuit court within and for said county and State, hereby certify the above and foregoing to be a full, true, and complete copy of all papers filed and order-book entries made in said cause as the same appears of record and on file in my office.

14 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Auburn, Indiana, this 10th day of January, 1891.

[SEAL.]

GEO. H. BISHOP,
Clerk De Kalb Circuit Court.

15 And afterwards, to wit, at the May term of said court, on the 18th day of September, 1891, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the plaintiff, by Peelle and Taylor and W. L. Penfield, his attorneys, and files his motion to remand the above-entitled cause to the State court whence it came; which motion is in the words following, to wit:

STATE OF INDIANA, } *ss:*
De Kalb County, }

John Yard, Jr., being duly sworn according to law, on his oath says he is the plaintiff in the cause of John Yard, Jr., administrator of the estate of William L. Sanders, deceased, *vs.* Baltimore and Ohio and Chicago Railroad Company, now pending in the circuit court of the United States for the district of Indiana; and affiant further says that the facts and statements set forth and contained in the motion in said cause — remand the same to the *to the* De Kalb circuit court of Indiana for trial, to which motion the affidavit is attached, are true as *affidavit* is informed and believes.

JOHN YARDE, JR.

Subscribed and sworn to before me, the undersigned, clerk
16 of De Kalb circuit court, this 22 day of September, 1891.

GEORGE A. BISHOP,
Clerk De Kalb Circuit Court.

Comes now the plaintiff and moves the court that the above and foregoing cause be remanded for trial to the De Kalb circuit court of the State of Indiana for the reason that said defendant, The Baltimore and Ohio and Chicago Railroad Company, was at the commencement of the above and foregoing suit and still is a domestic corporation of the State of Indiana, organized under the laws of the State of Indiana by the consolidation of the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, a railroad corporation of the State of Ohio, and the Baltimore, Pittsburgh and Chicago Railway Company, Indiana division, a railroad corporation organized under the laws of the State of Indiana, and said De Kalb circuit court of Indiana has jurisdiction of said *of said* cause and the same is triable there and not elsewhere.

W. S. PENFIELD,
Att. for the Pl'ff.

17 Articles of consolidation by and between the "Baltimore, Pittsburgh and Chicago Railway Company, Ohio division," and the "Baltimore, Pittsburgh and Chicago Railway Company, Indiana division."

Whereas the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, a railroad corporation of the State of Ohio has made and constructed its line of road to a point on the western bound-ry line of the State of Ohio in the township of Hicksville and county of Defiance in said State, and the "Baltimore, Pittsburgh and Chicago Railway Company, Indiana division," a railroad corporation of the State of Indiana has made and constructed its line of road in the adjoining State of Indiana to the same point on said bound ry line, and the several roads of said two companies s' unite as to form a continuous line for the passage of cars from Ch cago Junction in Huron county, State of Ohio to the weste bound-ry line of the State of Indiana in North township, count of Lake in said State, and whereas the laws of the State- of Ohio and of Indiana authorize the consolidation of railroad companies
18 whose roads so unite and form continuous lines and he directors of said two companies for the mutual benefi of the two corporations, and the convenience of the public have greed to unite and consolidate the two companies so as to form a ngle corporation,

Now therefore, this joint agreement, witnesseth,

That the said Baltimore, Pittsburg and Chicago Rilway Company, Ohio division, and the said Baltimore, Pittsb'rgh and Chicago Railway Company, Indiana division" by the bards of directors of said companies respectively, duly convened, have agreed together, and by these presents, do agree together, o merge and consolidate their capital stock, property and fra'chises into one corporation or body politic, upon the following terms and conditions:

First. The name of the new corporation c eated by this consolidation shall be, "Baltimore and Ohio and Chicago Company."

Second. The capital stock of this com'any shall consist of two hundred and forty thousand shar's of fifty dollars each.

19 Third. The stockholders of eac' of the parties to this agreement, shall be stockholders in the consolidated company hereby created and established and shall be entitled in the consolidated company, to a number of shares equal to the aggregate held by them respectively in each and both of the corporations hereby merged and consolidated, and shall be so registered in the books of the corporations hereby created and established—and they shall also be entitled upon the presentation and surrender for cancellation to the treasurer of the certificates of stock so held by them respectively in either of the corporations so merged to have issued to them respectively certificates for an equal number of shares in the consolidated company, and they shall also be entitled to have issued to them respectively certificates of shares in the consolidated company equal to the aggregate number of shares held by them respectively in each and both of the corporations hereby consoli-

dated upon proof of their respective subscriptions to the stock of said corporations hereby merged, and payment of such subscriptions whenever certificates of stock in said corporations hereby merged have not yet been issued to said subscribers as they by virtue of such subscriptions and their payments are entitled to have certificates of stock issued to them respectively. Said new certificates of stock in the consolidated company shall be signed by the president and countersigned by the treasurer and have the corporate seal affixed.

Fourth. The number of directors of this consolidated company shall be nine, one to be chosen from the State of Indiana, one from the State of Ohio and the remainder at large from the United States.

Fifth. The officers of the company shall be a president, secretary and treasurer. The directors shall elect one of their number to be president; and the secretary and treasurer shall be elected or appointed by and removable at the pleasure of the board of directors, and the offices of secretary and treasurer may be held by one and the same person. The place of residence of said officers shall be Ohio or Indiana in accordance with the laws of said two States.

Sixth. This agreement shall become operative, when the same shall have been submitted to the stockholders of each of said companies, parties hereto, at a meeting thereof, called seperately for the purpose of taking the same into consideration, and ratified and adopted upon a vote by ballot taken for the adoption or rejection of the same by two-thirds of all the votes of all of the stockholders of each of said companies and thereupon the secretary of each said companies shall certify the fact of such adoption upon this agreement, and this agreement or a certified copy thereof, shall be filed in the office of secretary of state of each of the States hereinbefore mentioned.

Seventh. From and after the consum-ation of this agreement and act of consolidation or merger by the corporations parties hereto and filing the same duly certified in the office of the secretary of state of each of the States herein before mentioned, all and singular the rights, privelages and franchises of each of said corporations parties hereto, and all property, real personal and mixed and all debts due on whatever accounts, as well as all stocks subscriptions, and other things in action belonging to each and both of said corporations, parties hereto, shall be taken and deemed transferred to and be vested in the corporation hereby established without further act or deed, and all the property, rights of way, and all other interest, shall be as effectually the property of the new corporation, as they were of the former corporations parties to these presents, and all rights of creditors, and all liens upon the property created by either of said corporations so merged, shall thenceforth attach to said new corporation, and be enforced against it to the same extent and in the same manner as if said debts, liabilities, and duties had been incurred by it.

Eight. After the adoption of this agreement by the stockholders

of the respective parties hereto, there shall be a meeting of the stockholders of the consolidated company on the 9th day of January 1877, at the hour of 5 o'clock p. m. for the election of directors and other officers of the new corporation hereby created and
23 established, which meeting shall be held at the town of Chicago Junction, Huron county, Ohio, in the principal office of the new company in the State of Ohio. Notice of the said meeting shall be given by the secretary of each of the corporations parties hereto, in some newspaper printed at the place and principal office of each of said corporations, parties hereto, at least three week- previous to such meeting.

Ninth. Thereafter the an-ual meeting for the election of directors of the new corporation, and the transaction of its general business shall be held on the first Wednesday following the first Tuesday of April in each and every year until duly changed by the action of the stockholders.

In testimony whereof, the directors of the several corporation parties hereto, have caused these presents to be signed in duplicate in the respective corporate names by their respective presidents and the respective corporate seals to be affixed thereto attested by
24 the respective secretaries on this 3rd day of November in the year 1876.

BALTIMORE, PITTSBURGH AND CHICAGO RAILWAY COMPANY, OHIO DIVISION,

[SEAL.] By W. C. QUINCY, *President.*

BALTIMORE, PITTSBURGH & CHICAGO RAILWAY COMPANY, INDIANA DIVISION,

By W. C. QUINCY, *President.*

Attest:

[SEAL.] E. C. WINSTANLEY,
Secretary Baltimore, Pittsburgh and Chicago Railway Company, Ohio Division.

C. E. WINSTANLY,
Secretary Baltimore, Pitsburgh and Chicago Railway Company, Indiana Division.

STATE OF OHIO, }
Huron County. }

Chicago Junction, principal office of the Baltimore, Pittsburgh & Chicago Railway Company, Ohio division.

I, E. C. Winstanley, secretary of the Baltimore, Pittsburgh & Chicago Railway Company, Ohio division, hereby certify that the within agreement was considered by the stockholders of said
25 company at a special meeting of said stockholders, duly called by the directors of said company and held in pursuance to due and legal notice, at the principal office of the company, in the town of Chicago Junction, Huron Co., Ohio, on the 3rd day of November, A. D. 1876, at 7 o'clock p. m., and at said meet-

ing all the stockholders of said company were present, either in person or by proxy, and a vote was taken by ballot for the adoption or rejection of the within agreement, each share of the stock entitling the holder thereof to one vote, and the ballots were cast either in person or by proxy, and all the votes of all the stockholders were cast for the adoption of the said agreement, and the same was duly ratified and adopted by the unanimous vote of the stockholders.

The following resolution referring to the within agreement, and the same was duly ratified and adopted by the unanimous vote of the stockholders.

The following resolution referring to the within agreement was unanimously adopted at said meeting by the stockholders, the votes therefore being given by ballot:

26 Resolved, That the joint agreement made and entered into by the directors of the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, with the Baltimore, Pittsburgh and Chicago Railway Company, Indiana division, a corporation of the State of Indiana, for the consolidation of said companies and prescribing the terms and conditions thereof, under the corporate seal of each of said companies, and dated November 3rd, 1876, be, and the same is hereby, ratified and adopted by the stockholders of the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, and that such agreement, with the proper certificate thereon of the adoption of the same by the secretary of — state of each of the States of Ohio and Indiana, and that the same be deemed and taken to be the agreement and act of consolidation of said companies.

Under the authority given me by the stockholders of said company at the meeting aforesaid, I hereby certify to the above facts.

In witness whereof I have hereunto affixed my signature and the corporate seal of said company on this 13th day of December, A. D. 1876.

27 [SEAL.]

E. C. WINSTANLEY,
Secretary Baltimore, Pittsburg and Chicago Railway Company, Ohio Division.

STATE OF INDIANA, }
De Kalb County. }

Garrett, principal office of the Baltimore, Pittsburgh & Chicago Railway Company, Indiana division.

I, E. C. Winstanley, secretary of the Baltimore, Pittsburgh & Chicago Railway Company, Indiana division, hereby certify that the within agreement was considered by the stockholders of said company at a special meeting of said stockholders, *daily* called by the directors of said company and held in pursuance to due and legal notice, at the principal office of the company, in the town of Garrett, De Kalb Co., Indiana, on the 12th day of December, A. D. 1876, at 9 o'clock a. m., and at said meeting all the stockholders of said company were present, either in person or by proxy, and a vote

was taken by ballot for the adoption or rejection of the within agreement, each share of the stock entitling the holder thereof to one vote, and the ballots were cast either in person or by
28 proxy, and all the votes of all the stockholders were cast for the adoption of the said agreement, and the same was duly ratified and adopted by the unanimous vote of the stockholders.

The following resolution referring to the within agreement was unanimously adopted at said meeting by the stockholders, the votes therefore being given by ballot:

Resolved, That the joint agreement made and entered into by the directors of the Baltimore, Pittsburgh and Chicago Railway Company, Indiana division, with the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, a corporation of the State of Ohio, for the consolidation of said companies and prescribing the terms and conditions thereof, under the corporation seal of each of said companies, and dated November 3rd, 1876, be, and the same is hereby, ratified and adopted by the stockholders of the Baltimore Pittsburgh and Chicago Railway Companies, Indiana division, and that such agreement, with the proper certificate thereon of the ratification of the same by the secretary of each of said companies, be filed in the office of the secretary of state of each of the States of
29 Ohio and Indiana, and that the same be deemed and taken to be the agreement and act of consolidation of said companies.

Under the authority given me by the stockholders of said company at the meeting aforesaid, I hereby certify to the above facts.

In witness whereof I have hereunto affixed my signature and the corporate seal of said company on this 13th day of December, A. D. 1876.

[SEAL.] E. C. WINSTANLEY,
Secretary Baltimore, Pittsburgh and Chicago Railway Company, Indiana Division.

Box 525. 62.

Articles of consolidation between Baltimore, Pittsburgh & Chicago —, Ind. div., and Baltimore, Pittsburgh & Chicago R'y Co., Ohio div. Filed Dec. 27, 1876. Jno. E. Neff, sec. of state.

30 *Certificate.*

STATE OF INDIANA,
Office of the Secretary of State, } ss:

I, Charles F. Griffin, secretary of state of the State of Indiana, do hereby certify that the annexed and foregoing is a full, true, and complete copy of the articles of consolidation by and between the "Baltimore, Pittsburgh and Chicago Railway Company, Ohio division," and the "Baltimore, Pittsburgh and Chicago Railway Company, Indiana division," filed in the office of the secretary of state of the State of Indiana on the 27th day of December, A. D. 1875, the name of the new corporation thus created being the "Baltimore

and Ohio and Chicago Railroad Company," as the same appears of record in this office.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of the State of Indiana, at city of Indianapolis, this 4th day of June, A. D. 1890.

CHARLES F. GRIFFIN,
Secretary of State.

31 And afterwards, to wit, at the May term of said court, on the 1st day of October, 1891, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective attorneys, and thereupon the court, being sufficiently advised in the premises, doth now sustain the motion of the plaintiff to remand the above-entitled cause to the State court whence it came; to which ruling of the court the defendant, by his attorneys, now except.

It is therefore ordered by the court that the above-entitled cause be, and the same is hereby, remanded to the De Kalb circuit court; and the clerk is hereby directed to transmit the papers herein, together with a certified transcript of all proceedings had in this court, to the clerk of said De Kalb circuit court.

And the defendant is now granted sixty days time in which to file a bill of exceptions.

And afterwards, to wit, at the November term of said court, on the 5th day of November, 1891, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by counsel, and files his bill of exceptions herein in the words following, to wit:

This day came the parties, by their attorneys, and thereupon this cause came on to be heard on the motion of the plaintiff herein, John Yard, Jr., administrator of the estate of William L. Sanders, deceased, to remand this cause to the State court from which

32 it was removed; and said motion *coming* on to be heard on the original transcript filed herein, together with the motion of the said plaintiff and the affidavit thereto attached, and also the affidavit on behalf of the defendant, by its special agent, J. E. Rankin, in addition to the affidavit contained in the original transcript therein, which said motion of the plaintiff and affidavit, together with the affidavit on behalf of the defendant, by its special agent, J. E. Rankin, are as follows:

UNITED STATES OF AMERICA,
State of Indiana.

Notice of Motion to Remand.

In the United States Circuit Court for the District of Indiana.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY. } No. 8662.

To the Baltimore and Ohio and Chicago Railroad Company.

SIR: You are hereby notified that the undersigned, complainant in the above-entitled cause, has filed in the United States circuit court for the district of Indiana a motion, accompanied by an affidavit, to remand for trial said above-entitled cause from said
33 United States circuit court *from* the district of Indiana to the said De Kalb circuit court of the State of Indiana for the reason that said defendant, The Baltimore and Ohio and Chicago Railroad Company, was at the time of the commencement of said suit and still is a domestic corporation of the State of Indiana, organized and under the laws of the State of Indiana; a copy of which motion is attached hereto and made a part of this notice.

You are further notified that said motion will come on for hearing and determination before said United States circuit court, at the city of Indianapolis on Wednesday, the 14th day of October, 1891, at 10 o'clock a. m., or as soon thereafter as the court can hear the same.

W. S. PENFIELD,
Att. for Pl'ff.

I hereby acknowledge service of the foregoing notice this 28th day of September, 1891.

J. H. COLLINS &
J. E. ROSE,
Attorneys for Baltimore & Ohio & Chicago Railroad Company.

STATE OF INDIANA,
De Kalb County, } ss:

John Yarde, Jr., being duly sworn according to law, on his oath says: He is the plaintiff in the cause of John Yarde, Jr., administrator of the estate of William L. Sanders, deceased, *vs.* Baltimore and Ohio and Chicago Railroad Company, now pending
34 in the circuit court of the United States for the district of Indiana; and affiant further says that the facts and statements set forth and contained in the motion in said cause to remand the same to the De Kalb circuit court of Indiana for trial, to which motion this affidavit is attached, are true as affiant is informed and believes.

JOHN YARDE, JR.

Subscribed and sworn to before me, the undersigned, clerk of the De Kalb circuit court, this 22 day of September, 1891.

[SEAL.] GEORGE A. BISHOP,
Clerk De Kalb Circuit Court.

In the Circuit Court of the United States for the District of Indiana.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
vs.
BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY.

Comes now the plaintiff and moves the court that the above and foregoing cause be remanded for trial to the De Kalb circuit court of the State of Indiana, for the reason that said defendant, The Baltimore and Ohio and Chicago Railroad Company, was at
35 the commencement of the above and foregoing suit and still is a domestic corporation of the State of Indiana, organized under the laws of the State of Indiana, by the consolidation of the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, a railroad corporation of the State of Ohio, and the Baltimore, Pittsburgh and Chicago Railway Company, Indiana division, a railroad corporation organized under the laws of the State of Indiana, and said De Kalb circuit court of Indiana has jurisdiction of said cause and the same is triable there and not elsewhere.

W. S. PENFIELD,
Attorney for the Plaintiff.

In the Circuit Court of the United States for the District of Indiana.

JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased, Plaintiff,
vs.
THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY, Defendant.
} Affidavit.

STATE OF OHIO, }
Franklin County. }

J. E. Rankin, being duly sworn according to law, says that he is the special agent of the defendant corporation in the above suit and as such has full authority to make this affidavit.

36 He further says that about the year 1871 the Baltimore, Pittsburgh and Chicago Railroad Company, Ohio division, was organized as a railroad corporation of the States of Ohio and made and constructed its line of road to a point on the bound-ry line of the State of Ohio and on the bound-ry line of the State of Indiana.

Affiant further says that the Baltimore, Pittsburgh and Chicago Railway Company, Indiana division, was a corporation organized under the laws of the State of Indiana about the same date as the

Ohio corporation aforesaid, and constructed its line of road from the eastern bound-ry of the said State of Indiana to the western bound-ry thereof, commencing in the county of De Kalb, at the western terminus of the said Ohio corporation, and ending in the county of Lake, on the border line between the States of Indiana and Illinois; that afterwards and after the construction of both of said lines of road, to wit, on the third day of November, in the year 1876, the two corporations aforesaid, to wit, the Baltimore, Pittsburgh and Chicago Railway Company, Ohio division, and the Baltimore,

Pittsburgh and Chicago Railway Company, Indiana division,

37 were consolidated under the laws of the State of Ohio under and in pursuance of sections 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390. 3391, and 3392 of the Revised Statutes of the State of Ohio, under the corporate name of the Baltimore and Ohio and Chicago Railroad Company, defendant in this suit; that said certificate of consolidation was executed in pursuance of the provisions of the said sections of the Revised Statutes of Ohio and of none others; and the general office of the said corporation was, by said certificate of consolidation, established at Fairtown of Chicago Junction, Ohio, in the county of Huron and State of Ohio; which said consolidation, so made exclusively under the laws of the State of Ohio, was done in pursuance of the under press authority conferred by section 3971 of the Revised Statutes of the State of Indiana, said defendant corporation by virtue of said consolidation becoming the owner of a continuous line of railroad from Chicago Junction, in the county of Huron, westward across a portion of the State of Ohio and the entire State of Indiana; and so affiant says that the defendant corporation in this suit is a corporation organized under the laws of the State of Ohio, and

38 is therefore a citizen of the State of Ohio and a resident thereof and not of the said State of Indiana.

J. E. RANKIN.

Sworn to before me and subscribed in my presence by J. E. Rankin this 30th day of September, A. D. 189[illegible].

FRANK A. DAVIS,
Notary Public in and for Franklin County, Ohio.

On consideration whereof the court find that said motion is well taken, and it is ordered that this cause be remanded to the circuit court of De Kalb county, in the State of Indiana, from which it was removed; to which order of the court the defendant, by its counsel, *expects*, and here presents to the court its bill of exceptions, which is allowed, signed, and sealed by the court and ordered to be made a part of the record of this case.

November 5, 1891. W. A. WOODS.

39 And at the same time the defendant, by J. H. Collins, Esq., his attorney, files his petition for a writ of error herein in the words following, to wit:

Now comes the defendant in the above case, The Baltimore and Ohio and Chicago Railroad Company, and here shows to the court that in the ruling of this court upon the motion of the plaintiff herein to remand this cause to the circuit court of De Kalb county, Indiana, from which the same was removed, there is manifest error, in this, to wit, said court erred in sustaining said motion and in ordering this cause to be so remanded.

Whereupon the said defendant herein prays that a writ of error be allowed, returnable to the Supreme Court of the United States, and that a citation issue thereof to the plaintiff in this case, and that a supersedeas bond be fixed by the court in accordance with the statute in such cases made and provided and the rules and regulations of said court.

J. W. COLLINS,
Attorney for Defendant.

40 And the court, being sufficiently advised, doth now grant the prayer of said petition, and the defendant is allowed a writ of error upon the filing of a bond in the penal sum of $10,000, with sureties to the approval of the court.

And afterwards, to wit, at the November term of said court, on the 5th day of December, 1891, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the defendant, by J. H. Collins, Esq., its attorney, and presents to the court its bond upon the writ of error herein in the penalty of ten thousand dollars ($10,000), with Orland Smith, president, Henry F. Sembauer, and Herman N. Coffinbury as sureties thereon; which said bond is now by the court approved and ordered to be filed.

And said bond is in the words following, to wit:

Know all men by these presents that we, The Baltimore and Ohio and Chicago Railroad Company, Henry F. Sembauer, and Herman N. Coffinberry, are held and firmly bound unto the above-named John Yarde, Jr., administrator of the estate of William L. Sanders, deceased, in the sum of ten thousand dollars, to be paid to said John Yarde, Jr., adm'r of estate of William L. Sanders, dec'd; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents.

Sealed with our seals and dated this 24 day of November, 1891.

Whereas the above-named The Baltimore and Ohio and Chicago Railroad Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana:

41 Now, therefore, the condition of this obligation is that if the above-named The Baltimore & Ohio & Chicago R. R. Co. shall prosecute its said writ of error to effect and answer all costs and

damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise in full force.

THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY,
By ORLAND SMITH, *President.* [SEAL.]
HENRY F. SEMBAUER. [SEAL.]
H. N. COFFINBERRY. [SEAL.]

Sealed and delivered in presence of—
Attest: G. A. RICHARDSON, *Secretary.* [SEAL.]

FRANK E. ROSE,
JAMES E. MORE,
Witnesses.

Taken and approved by me this 5th day of December, 1891.
W. A. WOODS, *U. S. Judge.*

42 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do hereby certify that the above and foregoing is a full and true and complete transcript of the record in the case of John Yarde, Jr., administrator, &c., *vs.* The Baltimore and Ohio and Chicago Railroad Company, as fully as the same remains upon the records now in my office.

Witness my hand and the seal of said court, at Indianapolis, this 18th day of December, A. D. 1891.

Seal Circuit Court of the United States, District of Indiana.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Case No. 14,959. Indiana C. C. U. S. Term No., 358. The Baltimore & Ohio & Chicago Railway Company, plaintiff in error, *vs.* John Yarde, Jr, administrator of the estate of William L. Sanders, deceased. Filed January 2, 1892.

In the Supreme Court of the

BALTIMORE AND OHIO AND CHI-
CAGO RAILROAD COMPANY,
Plaintiff in Error,
vs.
JOHN [illegible] YARDE, JR., Administrator
of the Estate of William [illegible]
Sanders, Deceased,
Defendant in Error.

MOTION TO DIS[illegible]

damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void: otherwise in full force.

THE BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY,
By ORLAND SMITH, *President.* [SEAL.]
HENRY F. SEMBAUER. [SEAL.]
H. N. COFFINBERRY. [SEAL.]

Sealed and delivered in presence of—
Attest: G. A. RICHARDSON, *Secretary.* [SEAL.]

FRANK E. ROSE,
JAMES E. MORE,
Witnesses.

Taken and approved by me this 5th day of December, 1891.
W. A. WOODS, *U. S. Judge.*

42 UNITED STATES OF AMERICA, } *ss:*
District of Indiana. }

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do hereby certify that the above and foregoing is a full and true and complete transcript of the record in the case of John Yarde, Jr., administrator, &c., *vs.* The Baltimore and Ohio and Chicago Railroad Company, as fully as the same remains upon the records now in my office.

Witness my hand and the seal of said court, at Indianapolis, this 18th day of December, A. D. 1891.

Seal Circuit Court of the United States, District of Indiana.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Case No. 14,959. Indiana C. C. U. S. Term No., 358. The Baltimore & Ohio & Chicago Railway Company, plaintiff in error, *vs.* John Yarde, Jr., administrator of the estate of William L. Sanders, deceased. Filed January 2, 1892.

In the Supreme Court of the United States,

BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY, *Plaintiff in Error*, vs. JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased, *Defendant in Error.*	No. 694.

MOTION TO DISMISS APPEAL.

WILLIAM L. TAYLOR,
W. L. PENFIELD,
MERRILL MOORES,
Attorneys for Defendant in Error.

FRANK H. SMITH, INDIANAPOLIS.

In the Supreme Court of the United States,

OCTOBER TERM, 1893.

BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY,
Plaintiff in Error,
vs.
JOHN YARDE, JR., Administrator of the Estate of William L. Sanders, Deceased,
Defendant in Error.

No. 694.
MOTION TO DISMISS APPEAL.

The defendant in error, John Yarde, Jr., Administrator of the estate of William L. Sanders, deceased, in the above entitled cause, by William L. Taylor, W. L. Penfield, and Merrill Moores, his attorneys, specially appearing to the cause herein for the purpose of this motion, moves the Court to dismiss the appeal herein, for the reason that this Court has no jurisdiction to enter-

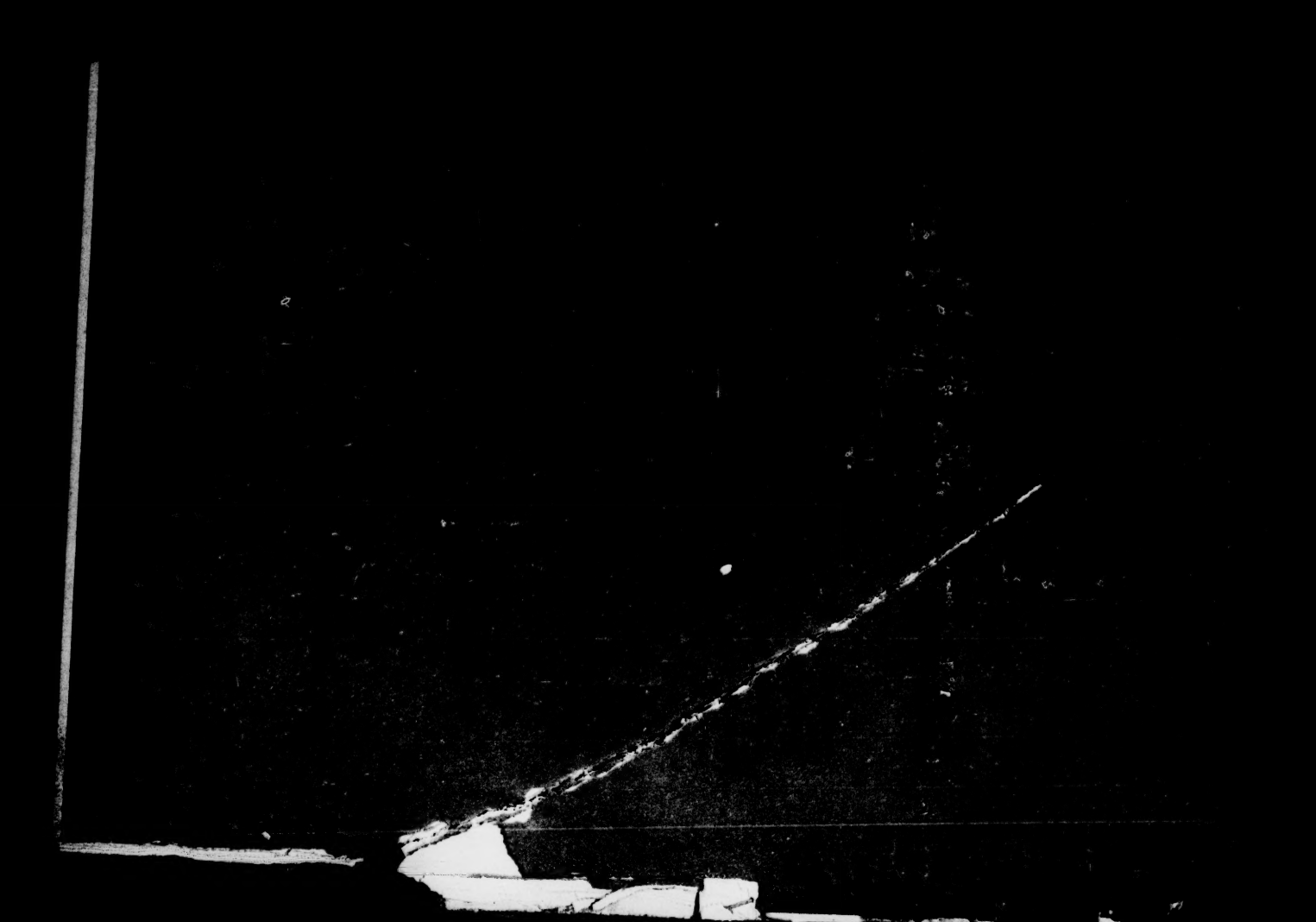
tain this appeal, it being an appeal from the order of the United States Circuit Court for the District of Indiana, remanding a cause to the State Court of said State, which was not a final judgment or decree from which an appeal will lie to this Court.

WILLIAM L. TAYLOR,

W. L. PENFIELD,

MERRILL MOORES,

Attorneys for Defendant in Error.



tain this appeal, it being an appeal from the order of the United States Circuit Court for the District of Indiana, remanding a cause to the State Court of said State, which was not a final judgment or decree from which an appeal will lie to this Court.

WILLIAM L. TAYLOR,

W. L. PENFIELD,

MERRILL MOORES,

Attorneys for Defendant in Error.

Office Supreme Court U. S.
FILED,
OCT 16 1893
JAMES H. McKENNEY,
CLERK.

SUPREME COURT

OF THE

UNITED STATES.

BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY, *Plaintiff in Error*, *vs.* JOHN WARDE, JR., ADMINISTRATOR OF THE ESTATE OF WILLIAM L. SANDERS, DECEASED.	OCTOBER TERM, 1893. No. 694.

Brief of Defendant in Error on his Motion to Dismiss this Appeal.

WM. L. TAYLOR,
W. L. PENFIELD,
Attorneys for Defendant in Error.

FRANK H. SMITH, INDIANAPOLIS

SUPREME COURT

OF THE

UNITED STATES.

BALTIMORE AND OHIO AND CHICAGO RAILROAD COMPANY, *Plaintiff in Error*, *vs.* JOHN YARDE, JR., ADMINISTRATOR OF THE ESTATE OF WILLIAM L. SANDERS, DECEASED.	OCTOBER TERM, 1893. No. 694.

Brief of Defendant in Error on his Motion to Dismiss this Appeal.

This action was originally brought in the Circuit Court of DeKalb County, Indiana, on the 22nd day of November, 1890, by the defendant in error, against the plaintiff in error. Before the cause was at issue, to-wit: On the 15th day of December, 1890, the plaintiff in error filed its petition for removal of this cause to the Circuit

Court of the United States for the District of Indiana, upon the ground that "the plaintiff was at the commencement of this suit and still is a citizen of the State of Indiana, and the Baltimore and Ohio and Chicago Railroad Company as defendant, a corporation duly incorporated under the laws of the State of Ohio, was at the institution of this suit and now is a citizen of said last named State." Said removal was prayed for on said ground and none other and said petition for removal was granted on said 15th day of December, 1890, by said DeKalb Circuit Court.

Thereafter defendant in error by proper motion in the U. S. Circuit Court, moved to remand this cause to the State Court from which it was removed, which motion was, on the 5th day of November, 1891, sustained by said U. S. Circuit Court, and said cause was ordered remanded to the Circuit Court of said DeKalb County, to which order the plaintiff in error by its counsel excepted, and executed and presented its bill of exceptions and prayed for the allowance of a writ of error returnable to this honorable Court, which was granted.

We earnestly insist that defendant's motion to dismiss this appeal should be sustained for the reason that this Court has no jurisdiction to entertain appeals of this kind. The order of the United States Circuit Court remanding this cause to the State Court was not a final judgment, decree or

order from which an appeal will lie to this Court.

This question has been so often decided that we deem it to be an intrusion upon the time of the Court to multiply authorities or to attempt to advance any argument. We merely cite the following authorities as absolutely conclusive of this point:

McLish v. *Roff*, 141 U. S., 661.

James F. Joy, Trustee, et al., v. *Aldebert College of the Western Reserve University, et al.*, 146 U. S., 355.

We suggest it is manifest that the appeal can be for no other purpose than delay.

Merrill Moores

WM. L. TAYLOR,

W. L. PENFIELD,

Attorneys for Defendant in Error.